

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: DEPUY ORTHOPAEDICS, INC. PINNACLE
HIP IMPLANT PRODUCTS LIABILITY LITIGATION

MDL No. 2244

Honorable Ed Kinkeade

This Document Relates To:

Andrews v. DePuy Orthopaedics, Inc., et al.

No. 3:15-cv-03484-K

Davis v. DePuy Orthopaedics, Inc., et al.

No. 3:15-cv-01767-K

Metzler v. DePuy Orthopaedics, Inc., et al.

No. 3:12-cv-02066-K

Rodriguez v. DePuy Orthopaedics, Inc., et al.

No. 3:13-cv-03938-K

Standerfer v. DePuy Orthopaedics, Inc., et al.

No. 3:14-cv-01730-K

Weiser v. DePuy Orthopaedics, Inc., et al.

No. 3:13-cv-03631-K

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION
FOR ORDER SETTING TIME LIMITS**

Defendants filed a motion requesting that the Court limit the examination time during the upcoming trial. At the pretrial conference on September 20, 2016, the Court announced it would give each side 70 hours for direct and cross-examination. (Transcript 9/20/16 at p. 6). Defendants' motion is therefore moot.

However, in the event the Court determines it is necessary to revisit the issue of time allocation as the trial progresses, Plaintiffs have the following observations regarding the Defendants' motion.

First, Defendants' motion uses the transcript page count as a metric for arguing Plaintiffs took more time during the last trial than Defendants. However, this method is

misleading. Throughout the trial, as the Court will undoubtedly recall, many of Defendants' witnesses – fact and expert witnesses both – were repeatedly admonished for giving non-responsive answers and were instructed by the Court to answer Plaintiffs' counsel's questions. This habitual witness conduct obviously and understandably increases the time required to conduct examinations. In fact, this problem was so egregious that Plaintiffs' counsel reviewed the transcript from the *Aoki* trial to provide the Court with detailed information about this issue. During that trial, the Court sustained 459 responsiveness objections to Defendants' witnesses, and only 10 for Plaintiffs' witnesses.

In light of this conduct, it is hardly surprising that Plaintiffs' examinations filled more of the *Aoki* trial transcript. Some of the worst offenders were Defendants' experts, who have frequently testified and presumably should know better. Dr. Cato Laurencin had 86 "non-responsive" objections to his testimony sustained by the Court. Dr. Roger Emerson had 59. Dr. Edward Boyer had 57. Dr. Patricia Campbell had 45. The list goes on, and includes some of Defendants' employees as well (Andrew Ekdahl, 12; Pam Plouhar, 22; Leanne Turner, 52).

Second, Defendants' motion fails to acknowledge that Plaintiffs have the burden of proof in these cases, so it is hardly surprising that questioning by Plaintiffs' counsel took more time in the last trial than questioning by Defendants' counsel.

September 23, 2016

Respectfully Submitted,

Plaintiffs' Co-Lead Counsel:

By: /s/ W. Mark Lanier

W. Mark Lanier

THE LANIER LAW FIRM

6810 FM 1960 Rd W

Houston, TX 77069-3804

Telephone: (713) 659-5200

Fax: (713) 659-2204

E-mail: wml@lanierlawfirm.com

Wayne Fisher

Justin Presnal

FISHER, BOYD, JOHNSON

& HUGUENARD, LLP

2777 Allen Parkway, Suite 1400

Houston, Texas 77019

Telephone: (713) 400-4000

Fax: (713) 400-4050

E-mail: wfisher@fisherboyd.com

E-mail: justinp@fisherboyd.com

*Plaintiffs' Executive Committee on behalf of the
Plaintiffs' Steering Committee:*

Richard J. Arsenault

NEBLETT, BEARD & ARSENAULT

2220 Bonaventure Court

P.O. Box 1190

Alexandria, Louisiana 71301

Telephone: (800) 256-1050

Fax: (318) 561-2591

E-mail: rarsenault@nbalawfirm.com

Jayne Conroy

SIMMONS HANLY CONROY

112 Madison Avenue

New York, NY 10016

Telephone: (212) 784-6402

Fax: (212) 213-5949

E-mail: jconroy@simmonsfirm.com

CERTIFICATE OF SERVICE

I certify that the foregoing instrument was served on all counsel of record by the Court's CM/ECF system, and was also forwarded to counsel for the Defendants by electronic mail on September 23, 2016.

/s/ Justin Presnal